

## **REMARKS/ARGUMENTS**

This is intended to be a full and complete response to the Office Action dated May 30, 2006 and pursuant to the telephone Interview of November 8, 2006. No claims have been amended or canceled and no new matter has been added. In view of the following remarks, applicants believe that all claims are in allowable form. Reconsideration is respectfully requested.

### **I. THE CLAIMED INVENTION MEETS THE REQUIREMENTS OF 35 U.S.C 112.**

#### **A. The claims are enabled.**

The Examiner rejected claims 1-14 under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. More specifically, the Examiner asserted the specification “provides support in figs 1 and 1A for the limitations regarding the aperture sidewalls being spaced from the first layer but does not provide support for that limitation when the apertures sidewalls originate in the first surface and terminate in the second plane, unless the second plane is not the same as the second surface.”

In reply, applicants respectfully submit that the claims as pending are clearly enabled in light of the various article embodiments and methods of making such shown and described in the figures. In particular, applicants note that the description and figures make clear the relationship between the second plane and the second surface and that one of skill in the art would be readily able to make a variety of materials within the scope of the claims in light of the various materials and methods of making such materials shown and described in the application.

For example, applicants note that Figs. 1 and 1A illustrate a second layer material suitable for use in embodiments of a claimed two-layer structure of the present invention having a first surface (the surface shown in Fig. 1 and indicated as the top surface of the layer in the perspective of Fig. 1A), a second surface (not shown), a caliper defined by a first plane 17 and a second plane 19, a plurality of macrofeatures 14 extending from the second layer, and a plurality of apertures defined by sidewalls 15 that extend from the

first surface to the second plane 19. As shown and described in the application, the first plane defining one end of the caliper (thickness) of the layer is defined by the uppermost portions of at least a plurality of the macrofeatures (see, for example, Figs. 1 and 1A, and description page 12, lines 6-14), and the second plane defining the other end of the caliper is defined by the lowermost extending sidewalls 15 (Fig. 1A, and description page 13, lines 5-8).

Furthermore, shown in Figs. 30 and 31 are embodiments of the two-layer material 400 as claimed having a first layer 301 and a second layer 300. Second layer 300 has a first surface (upper surface as shown) and a second surface (lower surface as shown), a plurality of disconnected macrofeatures 312, a plurality of apertures 311 defined by sidewalls that extend from the first surface toward the second surface (i.e., in a downward direction as shown) to a second plane (defined by the lowermost portion of the aperture sidewalls).

In light of the above, applicants respectfully submit that the relationship between the first and second planes and first and second surfaces is clear. In particular, applicants note that the second surface is clearly shown to be a surface of the material and the second plane an imaginary plane defining one end of the material caliper. Applicants note that in light of the various embodiments of materials and methods of making apertured second layers disclosed throughout the application, one of skill in the art would be readily able to make a variety of apertured layers suitable for use in the present invention wherein the aperture sidewalls extend any of a variety of distances beyond the second surface, or substantially do not extend beyond the second surface such that the second plane is essentially coincident with the second surface. Therefore, such claims are enabled and the Examiner's rejections should be withdrawn.

**B. The claims are definite.**

The Examiner rejected the claims under 35 U.S.C. 112, second paragraph as being indefinite. More specifically, the Examiner asserted "it is not clear what is meant by 'projecting therefrom,'" that it is "not clear what is meant by the limitation 'said surface is coincident with the first plane at said macrofeatures,'" and "it is not clear whether the first and second plane are the same as or different that the first or second surfaces and if

they are different can any line be drawn at a point in the structure to indicate the first and second planes?”

With regard to the Examiner’s first two questions/rejections, applicants respectfully submit that the language cited “projecting therefrom” and “said surface is coincident with the first plane at said macrofeatures” does not appear in the claims. Such rejections are thus improper and should be withdrawn.

With regard to the Examiner’s questions regarding the first and second surfaces and first and second planes, applicants respectfully submit that as described in the above remarks, the first and second planes are not arbitrarily drawn but define the caliper as described and shown in the application. In addition, the relationship between such planes and surfaces is clearly described and shown in the figures. Therefore, one of skill in the art would be readily able to determine the scope of such limitation in the claims and the claims are therefore definite. Accordingly, the Examiner’s rejection should be withdrawn and the claims allowed.

## **II. THE PENDING CLAIMS ARE PATENTABLE OVER THOMAS**

The Examiner rejected the pending claims under 35 U. S. C. § 102 (b) as being anticipated by U.S. patent 6,242,074 to Thomas (“Thomas”). More specifically, the Examiner asserted:

Thomas discloses a topsheet for use with absorbent articles comprising a first layer of a nonwoven fabric 104 and a second layer 102 comprising a formed film. The formed film has first and second planar surfaces, a plurality of macrostructures which project from the first surface and whose tops define the second planar surface, apertures defined by aperture side walls wherein the aperture sidewalls are spaced from the top layer. The apertures begin in the first plane and terminate in the second plane. The nonwoven layer only contacts the formed film layer at the macrostructures. (Office Action dated May 30, 2006, page 4).

Applicants respectfully submit that, contrary to the Examiner’s assertions, Thomas fails to teach each and every limitation of the claimed invention. In particular, applicants respectfully submit that Thomas fails to teach or suggest any apertures defined by sidewalls that are spaced apart from an adjacent layer, and fails to teach or suggest any disconnected

macrofeatures as defined in the claimed invention, let alone any material comprising these elements in combination with the other elements as claimed.

Rather, applicants respectfully submit that Thomas discloses materials having an apertured layer and one or more adjacent layers that are also adjacent to, and not spaced apart from, the aperture sidewalls of the apertured layer. With reference to Fig. 4B, applicants note that the apertures are defined by sidewalls 85 that extend from planar surface 83 to the lowermost portions of the aperture protrusion (as shown, see also column 10, lines 32-39). Layer 86 is fused or mechanically bonded to surface 83 of the apertured layer (Column 10, lines 41-42). Unlike the claimed invention, Thomas provides no macrofeatures or other structures which project above surface 83 in a disconnected fashion such that adjacent layer 86 is held from the aperture sidewalls 85 or surface 83 from which the aperture sidewalls 85 taper. Instead, layer 86 as shown and described in Thomas is clearly adjacent to, and not spaced apart from, surface 83 and aperture sidewalls 85 which taper from such surface 83.

With respect to Fig. 6, applicants note that layer 104 is analogous to layer 86 from Fig. 4B and not spaced apart from the aperture sidewalls for the same reasons as above. Therefore, such layer also is not spaced apart from the aperture sidewalls as required in the instant claims.

Applicants submit that Thomas provides no other teaching or suggestion of any two-layer material comprising a first layer and a second layer wherein the first layer is spaced apart from aperture sidewalls of the second layer as claimed. Therefore, Thomas fails to teach or suggest any such limitation, and the rejection should be withdrawn for this reason alone.

Moreover, applicants respectfully submit that Thomas fails to teach or suggest an apertured second layer having disconnected macrofeatures. Rather, the only aperture layers disclosed by Thomas are relatively conventional apertured film layers having a planar surface that is continuous (not disconnected) and defines apertures therein, and an opposite surface comprising aperture protrusions. For example, in Figs. 4A-B and 6, the top surfaces of layers 82 and 102 are planar surfaces (col. 10, line 33, col. 12, line 65) that are continuous and define the apertures therein. That is, as would be understood by one of skill in the art, looking at surface 83 or 106 from a top down view, one would see a flat continuous surface

having holes in it. Thus, Thomas provides no first surface having disconnected macrofeatures as claimed.

In addition, Thomas fails to teach or suggest any feature that exhibits the particularly claimed dimensions of the macrofeatures. Applicants note that with regard to WO 94/20054 (“Molnlycke”) addressed hereafter, the Examiner acknowledged that such document “differs from the claimed invention because it does not disclose the particularly claimed dimensions of the macrofeatures...” Applicants submit that Thomas similarly fails to provide any indication of dimensions of any features that would coincide with those required in the claimed invention. While the Examiner has suggested that the formed film can have a thickness of 0.0005-0.111 inches and so would meet the limitation of claims 2-4, applicants note that the thickness disclosed is for the entire formed film, and not for any features thereon. Thomas provides no indication as to how much of the entire thickness measurement is attributable to particular features thereon, nor any teaching of disconnected macrofeatures that are “visible to the normal, unaided human eye at a perpendicular distance of about 300 mm between the eye and the surface.” Thus, such reference does not expressly or inherently teach a macrofeature and the dimensions thereof as claimed.

In light of the above, applicants respectfully submit that Thomas fails to teach or suggest each and every limitation of the claimed invention. Therefore, the rejections in light of Thomas should be withdrawn.

### **III. THE CLAIMED INVENTION IS PATENTABLE OVER THE EXAMINER’S CITED COMBINATIONS**

The Examiner rejected the pending claims under 35 U. S. C. § 103 (a) as being unpatentable over WO 94/20054 (“Molnlycke”) in light of Merz et al., U.S. Pat. No. 4,995,930. More specifically, the Examiner asserted that Molnlycke “discloses a material for a topsheet of a diaper comprising a plurality of macrostructures where in the film is even apertured so that there are some apertures at the macrostructures and some at the base of the macrostructures in the film.” The Examiner acknowledged that Molnlycke “differs from the claimed invention because it does not disclose the particularly claimed dimensions of the macrofeatures and does not disclose providing a layer which contacts the first layer at the macrofeatures.” However, the Examiner nevertheless asserted that it would have been

obvious to select dimensions for the macrofeatures or peaks which provided optimum comfort and spacing, and that “Merz teaches that fibrous layers such as nonwoven fabrics can be laminated with apertured films for use in disposable hygiene products.”

In reply, applicants respectfully submit that contrary to the Examiner’s assertion, the combined references fail to provide any motivation or suggestion to modify the materials in Molnlycke to achieve the two-layer structure of claimed invention. Rather, applicants respectfully submit that Molnlycke teaches away from providing a layer which contacts the first layer at the macrofeatures and that combining a first layer with the apertured layer of Molnlycke would change the principle of operation of Molnlycke. Therefore the suggested references cannot be properly combined to achieve the claimed invention.

Molnlycke is directed to a surface material for absorbent articles intended to lie proximal to the user’s skin when the article is worn and to enhance comfort (application page 1, lines 3-13). In describing how the surface material provides such enhanced comfort, Molnlycke states that “the tops of the projections lie **against the wearer’s skin**” (emphasis added), and that “the total contact surface area of the surface material with the skin is small, which further enhances the comfort. . . .” Molnlycke further emphasizes throughout the application that the projections of the material therein are intended to face and lie against a user’s skin (see, for example, page 4, lines 20-29).

Applicants submit that one of skill in the art would therefore not be motivated to modify Molnlycke as suggested by the Examiner, because to do so would require ignoring the explicit teaching therein that the surface material projections are intended to contact a user’s skin. If a first layer were introduced to contact the Molnlycke projections as suggested by the Examiner, clearly such protrusions would not be available for contacting a user’s skin as described in Molnlycke. In addition, by adding a first layer to contact the projections of the Molnlycke material, one would seemingly increase the surface area of the Molnlycke material that contacts the skin (that is, now the entire first layer is the skin-facing material), contrary to Molnlycke’s teaching that comfort is enhanced at least in part by reducing the surface area contacting skin. Accordingly, applicants respectfully submit that Molnlycke cannot be properly modified, nor the Examiner’s cited documents properly combined, because to do so would change the principle of operation of Molnlycke and

contravene the explicit teachings therein. Therefore, the Examiner's rejection should be withdrawn and the claims allowed.

#### **IV. THE PROVISIONAL DOUBLE PATENTING REJECTION SHOULD BE WITHDRAWN**

In light of the above amendments and remarks, the only rejection remaining in the instant matter is the Examiner's provisional rejection. As such, the provisional rejection should be withdrawn and the case allowed. Applicants reserve the right to file a terminal disclaimer to obviate this rejection, should the conflicting claims be patented before allowance of the instant matter.

#### **V. CONCLUSION**

Applicants submit that all claims now pending are in condition for allowance. Accordingly, both reconsideration of this application and swift passage to issue are earnestly solicited. If the Examiner believes that any unresolved issues still exist, it is requested that the Examiner telephone Brett Freeman at 732-524-3428 so that appropriate arrangements can be made for resolving such issues as expeditiously as possible.

Please charge Deposit Account No. 10-0750/CHI0869CIP/BTF in the name of Johnson & Johnson for the cost of filing this Petition for a three-month extension of time from August 30, 2006 to November 30, 2006.

Respectfully submitted,

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